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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re B.C., et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

NANCY E.,

Defendant and Appellant.

F057939

(Super. Ct. No. 05CEJ300068)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Jane A. Cardoza, Judge.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Plaintiff and Respondent.

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Nancy E. (Nancy) appeals from jurisdiction and dispositional orders declaring her two children, then four-year-old daughter B.C. (daughter) and one-year-old son B.E.

(son) (collectively the children), to be dependents of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (g)¹ (no provision for support), removing them from her custody and providing her with reunification services.² Nancy contends: (1) the jurisdiction and dispositional orders must be reversed because she was not properly served in conformance with the Hague Service Convention; (2) the court abused its discretion in asserting continuing subject matter jurisdiction over the case and not ordering an inquiry into whether Mexico would be a more convenient forum; (3) the order removing the children from her custody is not supported by substantial evidence; (4) the visitation order was improper; and (5) the court abused its discretion in not placing the children with their great-grandparents in Mexico. We affirm.

FACTUAL AND PROCEDURAL HISTORIES

The Prior Dependencies

Nancy first came to the attention of the Fresno County Department of Children and Family Services (Department) in April 2005 when her mother (grandmother) was arrested for transporting and selling methamphetamine after law enforcement observed drug sales at grandmother's home and found approximately ten pounds of methamphetamine there in daughter's crib. Nancy, who was 15 at the time, was living at grandmother's home with then eight-month-old daughter and Nancy's three siblings. Nancy was arrested for child endangerment and possession for sale of an illegal substance, and daughter was removed from her custody. Daughter, Nancy and the siblings were all placed with the Department.

¹ All statutory references are to the Welfare and Institution Code, unless otherwise stated.

² The children have different fathers. Daughter's alleged father was denied reunification services, as his whereabouts were unknown, while son's father was unknown. Neither father is a party to these proceedings.

The juvenile court took jurisdiction over daughter and ordered reunification services for Nancy. The juvenile court also took jurisdiction over Nancy and her siblings due to grandmother's criminal activity related to narcotics sales and grandmother's failure to protect Nancy from sexual abuse by daughter's 26-year-old alleged father, who was living at grandmother's home.

Nancy was adjudicated a dependent pursuant to section 602 and made a ward of the juvenile delinquency court. By September 2006, Nancy had graduated from a group home program and was living with daughter, who had been placed with her on family maintenance, in a probation foster home. In October 2006, Nancy was terminated from section 602 probation. Since grandmother was not progressing to the point where her children could be safely returned to her, the Department took custody of Nancy and dependency proceedings were reinstated for her. She was removed from grandmother's custody and grandmother was given reunification services.

By the January 2007 review hearing, Nancy was pregnant. The social worker noted Nancy had matured to the level of being more preoccupied with her daughter's emotional well-being than her own, but her pregnancy showed her decision-making was incongruent with her experience and level of maturity. The social worker also noted that Nancy had participated in conjoint therapy with daughter, from which they were discharged when they became asymptomatic. The Department recommended an extended visit between Nancy and grandmother based on grandmother's progress in services. In March 2007, the court ordered reunification services terminated as to Nancy's siblings, but granted discretion to begin an extended visit between now 17-year-old Nancy and grandmother. Nancy's son was born in August 2007; he did not become a dependent because Nancy was capable of caring for him. In September 2007, grandmother's parental rights to Nancy's youngest sibling were terminated and the court ordered a permanent plan of long-term foster care for the other two siblings.

In December 2007, Nancy was placed with grandmother on an extended visit. The Department investigated whether Nancy could become a legal resident and was advised there was no probability that she could do so. On January 29, 2008, grandmother advised a social worker that Nancy had returned to Mexico and left the children in her care. On February 5, 2008, Nancy advised a social worker she was at her maternal grandmother's home in Mexico. Nancy said she was doing fine, but left because she was tired of everything. Nancy had no plans to return to the United States, and said the children would be brought to her soon. The Department recommended dismissal of Nancy's dependency case because she had reached the age of majority, was resistant to and irritated with services, was unable to become a legal resident and was no longer residing in the United States. On February 7, 2008, the court dismissed Nancy's dependency.

The Current Dependency Case

The instant dependency case began in September 2008, when police, who were serving a search warrant on the home where the children were living with grandmother, found three-quarters of a pound of crystal methamphetamine that was accessible to them. Grandmother was arrested for possession of a controlled substance for sale, willful cruelty to a child and contributing to the delinquency of a minor. Grandmother told a social worker that Nancy had been living in Mexico with her parents, the children's great-grandparents (great-grandparents), for the past 10 months and she had a notarized letter from Nancy giving her temporary custody of the children. According to grandmother, Nancy did not take the children with her because she felt it would be too hard for her. Grandmother said she did not have Nancy's address or telephone number. A social worker interviewed daughter, who identified grandmother as her mother, although daughter also knew Nancy's name and that she was in Mexico. Grandmother asked that the children be placed with their maternal aunt and uncle, G.V. and J.T., who also requested placement. The social worker submitted a relative placement referral for them.

The Department detained the children and placed them in foster care. In a petition filed September 30, 2008, the Department alleged the children came within jurisdiction of the juvenile court under section 300, subdivision (g), since Nancy, whose whereabouts were unknown, left them without any provision for their ongoing care and support as grandmother was no longer able to provide for them due to her incarceration.

Nancy did not appear at the October 2, 2008, detention hearing, but was appointed counsel and the children detained. After the children's counsel objected to any relative placement, the court ordered that relative placement may occur only with a court hearing. Counsel requested assessment of the maternal great-grandparents (great-grandparents) for placement. On October 2, 2008, Nancy's counsel filed written notice of Nancy's address in Mexico.

On October 27, 2008, the Department filed a first amended petition, which removed the section 300, subdivision (g) allegation, and instead alleged the children came within the meaning of section 300, subdivision (b) (failure to protect), due to Nancy's failure to make an appropriate plan for the children and to protect them, as she left the children in grandmother's care when she knew or reasonably should have known that grandmother was selling or abusing methamphetamine.

An October 28, 2008, a social worker's report prepared for the jurisdictional hearing stated that the Department was in the process of evaluating the maternal grandparents for possible placement of the children. A social worker spoke with Nancy by telephone on October 1, who was aware of the situation regarding the children as she had already spoken with her attorney and another social worker. Nancy asked to be represented in court and wanted the children returned to her care. Nancy said that grandmother would not let her take the children with her when she left for Mexico, so she agreed to have a letter notarized that stated the children were to stay with grandmother, while grandmother agreed to send the children to her in Mexico whenever she requested them. Nancy had requested return of the children several times, but grandmother refused

to return them because she became attached to them. Another social worker contacted Nancy on October 16; Nancy stated she was living with great-grandparents and gave her address and telephone number in Mexico.

At the October 28, 2008 jurisdictional hearing, Nancy's counsel acknowledged receipt of the petition on Nancy's behalf, waived formal reading and advisement of constitutional and statutory rights, and entered a denial. Nancy's counsel asked for a continuance of the hearing pending receipt of a report from Mexico concerning a request she might have to move the children to Mexico. A representative from the Mexican consulate was present, who stated she had received birth certificates of Nancy and great-grandparents, and letters from them requesting placement of the children with them in Mexico, and she understood the Department was working with the Mexican consulate to obtain a report from the Mexican department of social services. The court continued the hearing to November 17, 2008.

At the continued hearing, the representative from the Mexican consulate stated that she had provided the Department with detailed social economic studies on the great-grandparents and Nancy, but the Department did not have time to translate them yet. Nancy's attorney requested a continuance so the documents could be translated. The court continued the hearing to January 21, 2009, and ordered Nancy's counsel to send default consequences in writing to Nancy in Mexico.

On January 8, 2009, Nancy's counsel filed a statement of issues, which stated that Nancy denied the amended petition's allegations and was asking the children be returned to her care. Nancy's counsel asserted that when Nancy left for Mexico, she agreed to leave the children temporarily in grandmother's care while she got settled, but grandmother refused Nancy's repeated requests to send the children to her. Nancy's counsel claimed Nancy never intended to leave the children for any extended period of time, and when she left, there was no indication grandmother was involved in illegal activity. As witnesses, Nancy's counsel listed the case manager and Nancy, and stated

she would be requesting permission for Nancy to testify via telephone since Nancy could not attend the hearing.

The Jurisdictional Hearing

The jurisdictional hearing was continued several times and ultimately held on March 16, 2009. The Department filed a second amended petition on March 6, 2009, which included essentially the same allegations under section 300, subdivision (b), and added an allegation under section 300, subdivision (g), that Nancy had left the children without provision for support, as she returned to Mexico on or about February 5, 2008 and left the children with grandmother, who was unable to provide care and support for the children due to her arrest for drug and child cruelty charges, and Nancy had been unable to make a proper plan of care for her children, as she was currently residing out of the country and had no means by which to support the children or provide for their basic needs.

At the hearing, the parties reached a settlement whereby the Department would withdraw the section 300, subdivision (b) allegations, and Nancy would submit on an amended subdivision (g) allegation that struck the assertions that Nancy had no means to support the children or provide for their basic needs. Although Nancy was not present at the hearing because she was in Mexico, Nancy's counsel told the court she had called Nancy, who was prepared to testify, and discussed the subdivision (g) allegation with her. Nancy's counsel stated she advised Nancy in Spanish that the matter was set for trial and if she submitted on the subdivision (g) allegation, trial would not take place and she would be waiving her rights to testify, have the court subpoena evidence, cross-examine the social worker, and remain silent. Nancy's counsel further stated that Nancy indicated she understood those rights and would be willing to waive them and submit on the subdivision (g) allegation if the amendment was made. Nancy's counsel represented that as an "officer of the court" she believed Nancy understood both what she was waiving and the consequences, including that the children might not be returned to her care. After

noting there was no evidence Nancy had returned to California after moving to Mexico, Nancy's counsel submitted the matter, as did the attorneys for the Department and the children.

The court then found notice of the hearing had been given to all necessary persons, and found the amended subdivision (g) allegation in the March 6 second amended petition true. Nancy's counsel requested that one supervised telephone conversation between Nancy and daughter be attempted, as the Department had refused to allow Nancy to speak with daughter by telephone after daughter stated she did not want to speak with Nancy. The social worker explained that a therapist was working with daughter and practicing talking with Nancy on the telephone, but daughter refused to take the telephone when it was handed to her. The children's counsel objected to any telephonic contact without therapeutic input because the mental health assessment revealed problems probably attributed to daughter's confusion over who Nancy was. The court granted the Department discretion to allow daughter to have telephonic contact with Nancy in Mexico conditioned on five court day's written notice with discovery.

The Dispositional Hearing

In an April 2009 report prepared for the dispositional hearing, the Department recommended that the children be adjudicated dependents and remain in their current foster home placement, and Nancy be ordered to participate in reunification services. The social worker noted that Nancy had given birth to her third child in Mexico in January 2009, was living with great-grandparents in Mexico, was not working at that time, and was financially dependent on great-grandparents.

Daughter had undergone a mental health evaluation in October 2008, which disclosed that she presented with "excessive worry, fears, nightmares and disruptive behaviors all of which seem related to her long history of foster care and a change in caregivers," which symptoms warranted mental health treatment. In December 2008, daughter began participating in ongoing mental health therapy. The therapist

recommended daughter continue to participate in individual play therapy to address symptoms of anxiety, fear, nightmares and restlessness. Daughter did not want to participate in any visitation with grandmother, maternal aunt or uncle, or Nancy.

With respect to consideration of relatives for placement, the social worker stated that maternal aunt and uncle's home was approved on December 18, 2008, but the children were not placed with them due to their lack of relationship with the children, concerns regarding their awareness of grandmother's involvement in criminal activities and lack of intervention, and daughter's statements that she did not want to see them. With respect to visitation, the social worker stated Nancy could not legally travel to the United States from her home in Mexico and had not seen her children since she left the country in early 2008. While Nancy asked to speak to daughter by telephone, daughter refused to speak with her. As of the writing of the report, Nancy had not attended parenting classes or a mental health assessment. Nancy had taken a random drug test on November 7, 2008, which was negative. The children were stable in their foster home placement, where they had been living since their detention, and the foster parents were willing to adopt them should reunification efforts fail.

In December 2008, the Department received a psychological evaluation of Nancy, which was performed by a psychologist in Mexico. The psychologist administered psychometric tests, which resulted in the following diagnostic conclusions: "[Mother] may demonstrate a defeatist or pessimistic attitude, and therefore tends to exaggerate her physical problems or numerous complaints of lack of stability, reflecting a low self-esteem as well as a feeling of inadequacy and certain tendency to constantly blame herself on account of any situation which is generating distress at that time, having a low capability of *insight* for measuring the consequences of her actions, as well as being somewhat naïve in regard to making decisions; she demonstrates lack of tolerance, boredom, situations presenting conflict with intolerant persons at work. This individual has a history of few achievements; she demonstrates difficulty to concentrate and to think

clearly, she has doubts about herself, being confused in regard to her identity and what she wishes for.” The psychologist recommended Nancy obtain the psychological tools and resources necessary for lessening and reducing these symptoms by means of psychological services and therapy, as well as committing herself to attend the “school for parents.”

The director of the Mexican department of social work in the area where Nancy lived stated in a letter that the department was prepared to offer Nancy continuous psychological therapy and attendance at the school for parents. With respect to monetary support, the director stated the department would be able to offer “advice in order to approach the ‘opportunities’ (oportunidades) program, in view of the fact that within our programs, a monetary support does not apply in these situations,” as well as support for medications and other needs.

Lic. Maria De Jesus Moreno Ceja from Mexico’s department of social work completed a socio-economic study on Nancy and great-grandparents. According to the study, Nancy lived with great-grandparents and her 14-year-old maternal uncle, J., and appeared to have a good relationship with great-grandparents. The family had two incomes; great-grandparents both worked, but neither had a stable income. Nancy was seven months pregnant at the time of the assessment. Great-grandparents appeared emotionally stable and mature, as well as responsible, and were willing to participate in any assistance needed that would allow them to have “the minor they have in their custody.” Great-grandparents had been living together for 24 years, but married for only seven; J. was their child. Great-grandmother has three other children. Great-grandparents owned the house in which they lived, which was located in a community with high delinquency, prostitution, drug addiction and vandalism rates, and said they had no debts.

Moreno Ceja concluded: “According to the observation of the family in question, they are emotionally well at present, but they do not seem to have enough economic

stability to truly provide the child with a better future. It is important to point out that the family background is not very good regarding [great-grandmother], since she has had three partners; her eldest daughter repeated the conduct and had five children with different fathers, all of which were taken away by California authorities. In turn, her daughter is also the single mother of two children and she is expecting at present, which is also a repetition of the same conduct. To this effect, I believe it is important to point out that this conduct has been repeated and nothing has been done to deal with the problem. The relationship between [great-grandparents] is good and they are willing to undergo psychological assessment.” Moreno Ceja did not consider great-parents “fit to have custody of the child” from an economic point of view because their expenses were tight, but with respect to emotional stability, she believed great-grandfather was “more fit” to provide a good education, customs and values, as well as love and affection “for the child,” and, “due to her previous situation with other partners,” great-grandmother should first undergo psychological treatment to be able to provide a good education for “her grandson,” of whom she would like to have custody.

Nancy told Moreno Ceja she was emotionally stable, but considering everything she had been through, she thought she should go to psychological therapy so she can have her children and offer them true quality of life. Nancy also told Moreno Ceja that while she had not been in trouble with the law in Mexico, while living with grandmother in California, she was in youth centers because the authorities had taken away grandmother’s five children, including her, and she was undergoing the study to see if she could get her own children back and living with her. Moreno Ceja noted that Nancy did not have sufficient economic stability to provide for the children and she did not consider Nancy fit to have custody of them because she had no income and was financially dependent on great-grandparents. Moreno Ceja believed Nancy first should participate in therapy to address her family background, as well as family planning.

The Department social worker stated that throughout Nancy's prior dependency case, she could not tolerate living with grandmother due to ongoing family issues and a volatile relationship, yet she left the children in grandmother's care. The social worker noted that while Nancy wanted the children returned to her care, she continued to lack the means to support the children and provide for their needs.

The dispositional hearing was originally set for April 27, 2009, but was continued so the Department could resolve issues concerning attempts to locate daughter's alleged father. Nancy's counsel stated that if the matter was to be continued, she was interested in knowing how the Department intended to provide services to Nancy with the children in the United States and her in Mexico, and made it clear that Nancy was asking for placement. The court ordered the Department to follow up with the case manager.

The Department prepared an addendum report to address the issue of services available in Mexico and Nancy's request for placement of the children with her. On April 30, 2009, the social worker, Maria Navarro, contacted a social worker with the Mexican Desarrollo Integral de la Familia (DIF) regarding services for Nancy, who agreed to speak directly with Nancy so she could direct her to the office closest to Nancy's home and asked that Nancy contact her directly. Navarro gave Nancy the DIF social worker's number. On May 8, Nancy told Navarro she had made an appointment to see the social worker, but the offices were closed due to the swine flu. On May 13, Nancy told Navarro she had spoken to the social worker, who said she may be charged for the classes she needed to take, including therapy and parenting, but the social worker was going to speak with Nancy's attorney in Mexico who was working with her case. Navarro told Nancy she would contact the consulate to find out if services could be provided to her free of charge. On May 18, a representative from the Mexican consulate in Fresno informed the social worker that DIF usually provided programs free of charge and if DIF did not provide the services, Nancy would be referred to an outside agency that may charge for the services. The representative stated that Nancy would have to

follow-up with the delegation in her area in Mexico to see if they could find a way to provide her with these services.

On May 22, Nancy told Navarro she had spoken with the social worker on May 20 and was informed they were still waiting to hear from Nancy's Mexican attorney. Nancy only knew the attorney by a first name, but she had his telephone number. When the social worker asked Nancy if there was any change in her circumstances, Nancy responded she was still home with her five-month-old child and had not been able to look for employment because she did not have anyone else to look after her child. There was no answer at the Mexican attorney's telephone number.

The Department did not recommend placement of the children with Nancy based on the fact that her circumstances had not changed, since she was still dependent on great-grandparents and had not been able to obtain suitable means to provide for the children's basic needs. The Department recommended Nancy participate in individual therapy as indicated in her mental health evaluation, and advised it would continue to work with Nancy, the Mexican consulate and the DIF to facilitate her participation in this service. The Department further recommended Nancy develop a plan to gain financial independence so she can support the children prior to another home evaluation by DIF to assess further placement of her children with her in Mexico.

The dispositional hearing ultimately was held on June 18. Nancy's attorney filed a statement of issues, asking that the children be returned to her despite the DIF and the Department recommendations that she participate in services and if the court ordered the children detained, the case plan failed to address the specific needs of her family, including visitation.

Nancy's attorney informed the court that although Nancy was not present for the hearing, she was authorized to proceed in Nancy's absence. The Department entered into evidence a letter from daughter's therapist, in which she stated that daughter had been in individual therapy since December 2008 to the present with a goal of reducing her worry,

fear of separation, restlessness and nightmares. The therapist noted the foster mother appeared to providing daughter with a caring, supportive, encouraging, safe and nurturing environment, and daughter appeared happy in her care and to have a strong bond with her foster mother. The therapist did not believe it would be in daughter's best interest to be placed in the care of Nancy, who she had not seen for a year and a half. The therapist was concerned daughter could regress and her level of functioning decline if she were removed from her current environment, and if daughter visited Nancy in Mexico, a place daughter did not know, daughter's separation anxiety would increase. The therapist also did not believe it was in daughter's best interest to engage in telephone conversations with Nancy as it would cause confusion if adoption was the plan.

The therapist, a licensed marriage and family therapist, testified at the hearing that daughter had progressed in therapy and was close to meeting her goals. Daughter was very fearful when she started therapy and did not want to leave the foster parent. The therapist attributed daughter's fear to her history of instability. In the therapist's opinion, it was very important for daughter to have a good attachment to a stable care provider to reduce her symptoms and so she can feel secure in her environment. The therapist believed that if daughter was placed in the home in Mexico at that time with someone who was essentially a stranger she would very likely be damaged given her history of anxiety and fearfulness. Daughter was not seeking contact with Nancy and in therapy daughter focused on her foster mother, who she regarded as her family. With respect to telephone contact with Nancy, the therapist believed that if adoption was the goal, telephone contact could cause detriment.

When asked on cross-examination how she would get daughter to agree to visit with Nancy if reunification was the plan, the therapist responded the focus of therapy, namely symptom reduction and getting daughter to function adequately, would not change, and if visits took place, whatever stress or anxiety arose from that would have to be dealt with in therapy. The therapist understood that daughter had been in two foster

homes and cared for by four different people since her initial removal in 2005; during that time she was in Nancy's care for roughly a year. When the therapist started working with daughter, she spoke to daughter in Spanish, which was daughter's primary language, but daughter was now fluent in both Spanish and English. The court took judicial notice of the fact that during Nancy's entire dependency case and working with the Department on daughter's dependency between 2008, every time she came to court she was assisted by a Spanish language interpreter. The therapist discussed Nancy with daughter; daughter remembers Nancy and called her by her first name, but the therapist did not know if daughter understood the concept of Nancy being her biological parent. The therapist agreed that any reactions daughter might have to telephone contact with Nancy could be dealt with in a therapeutic setting.

Nancy's counsel cross-examined social worker Navarro. Navarro testified that one of the services Nancy needed was therapy to discuss her issues and explore her decision-making and choices. Navarro was aware that DIF had said they would not help pay for Nancy's services, but she had asked the local Mexican consulate to look into it and provide information about what could be done to get Nancy into services in Mexico. When asked how the issue of bond between daughter and Nancy would be addressed in therapy, Navarro testified that "[w]e would have to be able to have telephone contact and see where we can move from there." Navarro had not discussed with any mental health professional how best to accomplish the goal of bonding and there was no plan in place for that at that time, but she agreed contact between Nancy and daughter was essential to develop that bond. The last time Navarro spoke with Nancy was at the end of May; since then Navarro had not done anything except call the consulate.

The parties stipulated that if Nancy were to testify she would testify as follows: (1) she had been employed as a waitress until she had her current child, who was six months old; (2) she was actively seeking employment; (3) the local clinic told Nancy she would have to pay for her services; and (4) great-grandmother would provide daycare.

The Department asked the court to follow the recommended findings and orders, and to find by clear and convincing evidence it would be detrimental to place the children with Nancy. Nancy's counsel argued the reasons stated in the DIF report for removal, basically that Nancy was young, immature and poor, were insufficient to justify continued removal, and the Department failed to explore any other possibilities short of removal, such as placing the children in foster care in Mexico. Nancy's counsel asked for immediate return and placement of the children with Nancy. Nancy's counsel further argued the Department's plan failed to address the family's needs, and if there was going to be reunification, visitation would need to take a high priority, and asked that weekly visitation be ordered. Nancy's counsel also asked that the Department contact the DIF and set up a plan for the family to reunify.

The court responded that it would probably agree on the removal "except for the one issue which was that she had previously committed a felony possession of ten pounds of methamphetamine for sale and was in this court before on that allegation. She did reunify, so she's entitled to reunification efforts. But with that history there is no possible way I could just give her back to the mother. I mean, very least we have parenting." The court confirmed that Nancy was undocumented. The children's counsel argued it would be detrimental to send the children to Mexico. The court responded it was not going to remove the children from their present location due to the previous felony, and explained that even though Nancy had reunified, it did not have to return the children to a mother with that kind of history without a reunification plan. The court was also concerned that Nancy had left the children with grandmother for a period of six months. The Department's attorney argued Nancy had very little contact with the children throughout their lives, and the problem that needed to be addressed was Nancy's instability and how that had damaged the children, as well as her poor choices in leaving the children with grandmother and returning to Mexico, joining grandmother in drug sales, and having another child. The Department argued Nancy demonstrated a lack of

ability to parent successfully by her lack of good choices which damaged the children to the extent she exposed them to those choices and her instability.

The court followed the Department's request as to disposition, finding the children were dependents and persons described by section 300, subdivision (g), and reasonable efforts had been made to prevent their removal from parental custody. The court removed the children from Nancy's custody and permitted them to remain in licensed foster care. The court ordered "supervised visits between the minors and Nancy," as well as supervised telephonic communication, and family reunification services for Nancy, comprised of parenting classes, mental health evaluation and recommended treatment, and random drug testing.

DISCUSSION

Personal Jurisdiction and Notice

Nancy contends all orders in this dependency proceeding are void because she never received proper notice of the proceedings as required under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638) (hereafter the Hague Service Convention or the Convention). She asserts that because of the improper service, the juvenile court never acquired personal jurisdiction over her regardless of the facts that she had actual notice of the proceedings, was represented by counsel, participated in the proceedings through counsel, submitted on the issue of jurisdiction over the children, asked for return of the children, was offered reunification services, and never raised this issue below. We disagree.

Parents are entitled to due process notice of juvenile court proceedings affecting the care and custody of their children. (*In re B.G.* (1974) 11 Cal.3d 679, 688-689 (*B.G.*); *In re Claudia S.* (2005) 131 Cal.App.4th 236, 247.) Due process requires that, before depriving a parent of his or her parental rights, the state "must afford [the parent] adequate notice and an opportunity to be heard." (*B.G.*, *supra*, 11 Cal.3d at p. 689.)

While in dependency cases the court takes jurisdiction over the child, not the parent, the dependency court obtains personal jurisdiction over a parent “when the parent is properly noticed, because notice gives the parent the choice whether to appear in the dependency proceeding.” (*In re Daniel S.* (2004) 115 Cal.App.4th 903, 916.) Pursuant to section 291, subdivision (a), Nancy was entitled to notice of the hearings occurring after the initial petition hearing, and under section 291, subdivision (e)(1), because the children were detained and Nancy was not present at the initial petition hearing, she “shall be noticed by personal service or by certified mail, return receipt requested.”

In this case, Nancy has been living in Mexico throughout these proceedings. Nancy accordingly contends the Department was required to comply with the Hague Service Convention when serving her with notice of the hearings. “The Hague Service Convention was ‘intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad.’” (*In re Alyssa F.* (2003) 112 Cal.App.4th 846, 852 (*Alyssa F.*)). Two appellate courts have concluded that the Hague Service Convention applies to juvenile dependency cases brought under section 300 because such cases are civil in nature, and held that the Convention must be complied with when serving the petition and notice of jurisdictional and dispositional hearings on a parent who is a resident of a signatory country. (*In re Jorge G.* (2008) 164 Cal.App.4th 125, 133 (*Jorge G.*); *Alyssa F.*, *supra*, 112 Cal.App.4th at p. 852.) Both the United States and Mexico are signatories to the Convention. (*Jorge G.*, *supra*, 164 Cal.App.4th at p. 134.)

“The primary innovation of the Convention is that it requires each state to establish a central authority to receive requests for service of documents from other countries. 20 U.S.T. 362, T.I.A.S. 6638, Art. 2. Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law. Art. 5. The central authority must then provide a certificate of

service that conforms to a specified model. Art. 6. A state also may consent to methods of service within its boundaries other than a request to its central authority. Arts. 8-11, 19.” (*Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 698-699.) Article 10 of the Convention permits service of process by alternative methods, including personal service or service by mail “[p]rovided the State of destination does not object.” (Hague Service Convention, *supra*, 20 U.S.T. 361, Art. 10.)

Nancy contends that Mexico has objected to alternative methods of service, thereby leaving service through Mexico’s Central Authority as the exclusive means of serving her with notice of the jurisdictional and dispositional hearings. It is undisputed that neither notice was served through Mexico’s Central Authority; Nancy was never served with notice of the jurisdictional hearing by any method and Nancy was served with notice of the dispositional hearing at her address in Mexico by international registered mail.³ Because Nancy was not served through Mexico’s Central Authority, she contends the juvenile court never had personal jurisdiction over her.

We need not decide whether service through the Central Authority was required in this case because Nancy forfeited her right to complain of improper notice by

³ While the appellate record initially did not show that Nancy had been served with notice of the dispositional hearing, the Department requested that we either augment the record or take judicial notice of documents it asserted were a notice of the dispositional hearing and proof of service showing that Nancy had been served by certified or registered mail. We denied the request, but remanded the matter to the juvenile court to determine if, in fact, the Department’s clerk had sent such a notice of hearing and directed the juvenile court to conduct appropriate proceedings to determine the veracity of the notice of hearing and proof of service, and whether the notice was sent on the date stated on the notice. A hearing was held on February 19, 2010, at which an office assistant from the Department testified she mailed the notice of the dispositional hearing to Nancy on April 2, 2009, by international registered mail. The juvenile court granted the Department’s motion to augment the record with the notice of hearing and proof of service, finding the notice was served pursuant to the Department’s procedures and Nancy was provided proper notice. While Nancy argues on appeal that these findings were not supported by substantial evidence, we need not resolve this issue.

subsequently appearing and participating in the dependency proceedings. Defects in notice, including failure to comply with the Hague Service Convention, if applicable, may be forfeited when a parent acquiesces to the juvenile court's jurisdiction and actively participates in its proceedings. (*B.G.*, *supra*, 11 Cal.3d at p. 689; *In re Jennifer O.* (2010) 184 Cal.App.4th 539, ___, [2010 Cal.App. LEXIS 626, **15-16]; *Jorge G.*, *supra*, 164 Cal.App.4th at p. 133 [noting that since there was no contention the parents, who claimed they were required to be served notice that complied with the Convention, voluntarily submitted to the court's authority or made a general appearance, compliance with the statutes governing service of process was essential to establish the court's personal jurisdiction over them]; *Alyssa F.*, *supra*, 112 Cal.App.4th at pp. 851-852 [noting further service after remand to juvenile court was not required because father's general appearance at the Court of Appeal conferred personal jurisdiction over him despite fact that he had not been served with notice of the jurisdictional or dispositional hearings pursuant to the Convention]; *In re Gilberto M.* (1992) 6 Cal.App.4th 1194, 1198-1200 (*Gilberto M.*); see *In re Etherington* (1950) 35 Cal.2d 863, 867 [mother's "personal appearance at [juvenile court] hearing and her participation therein without objection as to the timeliness of the notice to her . . . constituted a waiver of any insufficiency in that respect as a jurisdictional requirement"].)

For example, this court has held that a father acknowledged jurisdiction of the juvenile court when, although he apparently was not served with the petition commencing the dependency proceeding, he appeared through counsel for the first time at the six-month status review hearing and, without objecting to the court's jurisdiction, resisted the termination of his reunification services and urged the court to find that meaningful reunification efforts were never made. (*Gilberto M.*, *supra*, 6 Cal.App.4th at pp. 1199-1200.) In *B.G.*, our Supreme Court held that mother's appearance at the juvenile court through counsel after the juvenile court adjudged her children dependents without providing notice to her constituted an acknowledgement of the juvenile court's

jurisdiction when she did not seek to terminate jurisdiction or challenge the validity of the prior order, but instead requested transfer of custody to her, and later stipulated that the juvenile court had personal jurisdiction over her and she had waived any defect in notice. (*B.G.*, *supra*, 11 Cal.3d at p. 689.)

Here, Nancy received actual notice of the dependency proceedings when a social worker and her court-appointed attorney spoke with her at the beginning of October 2008, the outset of the dependency proceedings. At that time, Nancy asked that she be represented in court and the children returned to her care. Nancy's attorney asked for continuances of the jurisdictional hearing so that reports assessing Nancy and great-grandparents for placement could be completed and translated. When the jurisdictional hearing took place, Nancy submitted on the amended section 300, subdivision (g) allegation after her counsel informed the court she had spoken to Nancy and Nancy understood the rights she was waiving if she submitted on the allegation. In addition, Nancy, through her counsel, affirmatively sought to have the juvenile court order telephone contact with daughter. At the dispositional hearing, Nancy affirmatively sought placement of the children and argued that the reunification plan was not tailored to the family's needs. While Nancy did not personally attend any of the hearings, she was represented at all of them by her court-appointed attorney.

Although she had ample time to do so, Nancy neither moved to set aside the detention orders nor challenged the juvenile court's jurisdiction. Instead, she participated fully in the proceedings by submitting on the issue of jurisdiction over the children, requesting placement of the children with her, and arguing over the reunification plan. Since Nancy acknowledged the jurisdiction of the juvenile court, she is precluded from challenging it here.

Nancy contends that her counsel's submission on the subdivision (g) allegation does not have any bearing on the issue of whether the court had personal jurisdiction over her, citing *Jorge G.* and *Alyssa F.* We disagree, as in neither case did the court address

the issue of whether the parents voluntarily submitted to the court's authority or made a general appearance. In *Jorge G.*, the appellate court specifically noted that the department of children and family services did not raise such a contention (*Jorge G.*, *supra*, 164 Cal.App.4th at p. 133) and in *Alyssa F.*, the father had not appeared at any of the juvenile court hearings or requested affirmative relief in the juvenile court (*Alyssa F.*, *supra*, 112 Cal.App.4th at p. 851-852). In contrast here, the Department has argued that Nancy's due process rights were not violated because she fully participated in the proceedings, and the record bears that out. Accordingly, Nancy's claim that the juvenile court's orders must be reversed for failure to serve her pursuant to the Hague Service Convention fails.

Inconvenient Forum

Nancy contends the juvenile court abused its discretion by asserting continuing subject matter jurisdiction over the children and failing to consider whether Mexican courts would be a more appropriate forum for litigation of the children's dependency status. According to Nancy, the juvenile court had a sua sponte duty to consider whether Mexico would be a more convenient forum to hear the case.

Family Code section 3427, subdivision (a) provides: "A court of this state that has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court." Family Code section 3427, subdivision (b) provides: "Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors," and lists eight such factors, including "[t]he length of time the child has resided outside this state." (Fam. Code, § 3427, subd. (b)(2).)

Relying on *In re Stephanie M.* (1994) 7 Cal.4th 295 (*Stephanie M.*), which involved the issue of whether the juvenile court had appropriately taken jurisdiction in a dependency case involving Mexican citizens, Nancy asserts the juvenile court here was required to consider whether it was the appropriate forum. In *Stephanie M.*, our Supreme Court noted the statute provides that a court may make a determination on its own motion that California is not a convenient forum and concluded the appellate court erred when it assumed that without notice of a pending Mexican proceeding, the juvenile court was under no obligation to consider whether it was the appropriate forum. (*Id.* at p. 311.) The Court stated: “Nonetheless, although the juvenile court could have inquired whether the courts of Mexico would assume jurisdiction and provide a more appropriate forum (Fam. Code, § 3407, subd. (d)), we see no abuse of discretion in the court’s failure to decline jurisdiction.” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 312.) Applying the factors a court may take into account when determining if it is an inconvenient forum, the Court concluded that it could not “say that the [juvenile] court abused its discretion in failing to decide, on its own motion, and in the absence of any controversy on the point whatsoever, to decline jurisdiction.” (*Id.* at pp. 312-313 [fn. omitted].)

Setting aside whether forum non conveniens in the dependency context applies to a case involving a mother who is a foreign national and children who are American citizens, Nancy’s contention is without merit. First, nothing in *Stephanie M.* suggests that a court has a sua sponte duty to consider whether California is a convenient forum every time a foreign national is involved. Second, Nancy is barred from raising her claim on appeal. As this court has explained, where the issue of inconvenient forum is not raised on a party’s motion, on the court’s own motion, or on the request of another court, the issue “was not properly raised in the juvenile court and is not an issue before this court.” (*In re S.W.* (2007) 148 Cal.App.4th 1501, 1511.)

Although Nancy’s counsel did not specifically make a motion requesting the court to determine whether it was a convenient forum, Nancy contends her counsel raised the

issue during closing argument at the dispositional hearing when she argued that it would be impossible for Nancy to reunify with the children with the case proceeding in California and her living in Mexico. Even if counsel's argument was sufficient to require the court to consider whether it was a convenient forum, an examination of the factors the court is to consider when determining if another state (or country) is a more convenient forum for a child custody case reveals that California was the appropriate forum here. We need look no further than that the court, in deciding whether to decline to exercise jurisdiction in a matter, is to consider "[t]he length of time the child has resided outside this state." (Fam. Code, § 3427, subd. (b)(2).) During their short lives, the children had lived exclusively in this state. Due to this fact, the juvenile court also reasonably could conclude that the evidence pertinent to resolving the present dependency was in California. Moreover, the juvenile court was more familiar than Mexico with the issues presently affecting the children and reasonably could conclude it would be neither expeditious nor in the children's best interest to disrupt their placement and send the matter to Mexico to begin proceedings anew.

In sum, the juvenile court did not err in failing sua sponte to decline jurisdiction as an inconvenient forum.

The Removal Order

Nancy next contends the juvenile court abused its discretion in removing the children from her custody because there was insufficient evidence of a substantial danger to their physical health, safety, or well-being if returned home. (§ 361, subd. (c)(1).) We find no ground for reversal.

When a parent challenges a dispositional finding, the question is whether substantial evidence supports the finding. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581 [although trial court makes findings by the elevated standard of clear and convincing evidence, substantial evidence test remains the standard of review on appeal].) In resolving this

question, we view the evidence in the light most favorable to the trial court's determination, drawing all reasonable inferences in favor of the determination and affirm the order even if there is other evidence supporting a contrary conclusion. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

As relevant here, before the court may order a child physically removed from his or her parent, it must find by clear and convincing evidence that the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136 (*Diamond H.*), disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The parent's level of denial is an appropriate factor to consider when determining the risk to the child if placed with that parent. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision].) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*Diamond H.*, *supra*, 82 Cal.App.4th at p. 1136; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536, citing *B.G.*, *supra*, 11 Cal.3d at p. 699.)

We conclude that application of the appropriate standard of review, bearing in mind the heightened burden of proof below, requires that we affirm the juvenile court's dispositional order because it is supported by substantial evidence. The evidence showed Nancy had a history of instability and poor decision-making, as shown by her involvement with grandmother in drug sales in 2005, having children by multiple fathers, returning to Mexico without her children when she turned 18 because she was tired of

everything, and apparently doing nothing to try to obtain custody of them once it became apparent to her that grandmother was not going to return them. Nancy's psychological evaluation revealed that Nancy had low self-esteem and little insight into the consequences of her actions, as well as being naïve with respect to her decisions, demonstrated lack of tolerance and boredom, and had difficulty concentrating and thinking clearly. The psychologist concluded that Nancy needed to obtain the psychological tools to reduce these characteristics through psychological therapy and parenting. The socio-economic studies showed that Nancy did not have the resources to provide for the children.

It is apparent from the evaluation and the studies that Nancy did not have the skills to parent her children on her own, and that she needed therapy and parenting classes to help her develop the skills she needed to exercise parental authority. Nancy's instability and poor decision-making harmed the children, as shown by daughter's excessive worry, fears, nightmares and disruptive behaviors, which the therapist attributed to daughter's history of different caregivers.

From this evidence, the juvenile court reasonably could conclude that Nancy's instability and lack of judgment presented a substantial risk of harm to the children should they be returned to her care. Given Nancy's propensity toward boredom, coupled with her lack of resources and poor decision-making, the court could conclude that without intensive services Nancy could become overwhelmed and leave the children with great-grandparents, who themselves were financially strapped and without resources to support the children.

Nancy contends the juvenile court's decision to remove the children was based on a misunderstanding of the facts. She asserts the court refused to return the children to her because it believed her drug felony occurred during the present dependency case as opposed to the prior case. From the court's comments, however, it appears the court knew the felony occurred in the prior case, as it noted she was in dependency court

before due to the felony and had reunified with daughter. Regardless of the juvenile court's belief, its reasoning is not a matter for this court's review. (*Davey v. Southern Pac. Co.* (1897) 116 Cal. 325, 329.) It is judicial action and not judicial reasoning which is the proper subject of appellate review. (*El Centro Grain Co. v. Bank of Italy, Etc.* (1932) 123 Cal.App. 564, 567.)

Nancy demonstrated an inability to parent successfully as shown by her lack of good decisions which harmed the children. The juvenile court reasonably could conclude it would be unsafe to return the children to Nancy until she had benefitted from intensive services to enable her to develop her parenting skills.

The Visitation Order

The juvenile court ordered supervised visits between Nancy and the children, as well as supervised telephonic communication. Nancy contends the visitation order must be reversed because it did not specify the frequency of visitation or how visitation would occur in light of the fact that Nancy lived in Mexico and the children in the United States.

“A court may not delegate its discretion to determine whether any visitation will occur, but it may delegate decisions such as the time, place and manner of visitation.” (*In re Randalynne G.* (2002) 97 Cal.App.4th 1156, 1164, superseded by statute on another ground as stated in *In re S.B.* (2004) 32 Cal.4th 1287, 1294-1295.) “As stated in [*In re Jennifer G.* [(1990) 221 Cal.App.3d 752], the ministerial tasks of overseeing visitation as defined by the juvenile court ‘can, and should, be delegated to the entity best able to perform them, here the department of social services.’ [Citation.] ‘Such matters as time, place and manner of visitation do not affect the defined right of a parent to see his or her child and thus do not infringe upon the judicial function.’” (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374 (*Moriah T.*)). “[T]he frequency and length of visits are simply aspects of the time, place and manner of visitation. Accordingly, the juvenile court may grant to the county agency the discretion to determine the frequency and length of visitation ordered by the court.” (*Id.* at pp. 1376-1377.)

The order at issue here, although terse, nevertheless addresses the critical issue of whether visitation shall occur. The juvenile court stated it would “order supervised visits between the minors and the mother,” and “also order . . . telephonic communication,” which would also be supervised. As this court explained in *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1009 (*Christopher H.*), “[d]espite dictum to the contrary in *In re Jennifer G.*[, *supra*,] 221 Cal.App.3d [at p.] 757, most courts, including ours [citation], agree the visitation order need not specify the frequency and length of visits. Such specificity is at odds with the purposes and practical necessities of a visitation order intended to protect the well-being of a dependent child while both maintaining ties between the child and parent and providing the parent with an opportunity to demonstrate why his right to custody and care of the child should be reestablished.”

Neither is the visitation order deficient because it failed to specify the place and manner of visits, i.e. how visitation would be accomplished. In this case, where Nancy is living in another country, it is entirely rational to allow the Department to work out the details of Nancy’s visitation, including when and where visits will take place. As the Department points out, an order mandating any particular frequency or manner of visitation could have placed an impossible burden on it and had the potential for compromising its ability to fulfill its statutory mandate to supervise each case in a manner consistent with the children’s best interests.

Nancy expresses concern that the Department will be either unable or unwilling to arrange visitation on its own. The Department, however, is obligated to facilitate visits that are reasonable in length and frequency for the circumstances of each child. (*Christopher H.*, *supra*, 50 Cal.App.4th at p. 1010 [noting visitation order must be “read in light of statutory mandates prescribing visitation between parent and child ‘as frequent as possible, consistent with the well-being of the minor’”].) The limited power delegated to the Department to implement Nancy’s visitation rights, given to her by the juvenile court, is still subject to periodic review by the juvenile court; therefore, should Nancy

believe the Department is preventing her from exercising her visitation rights, she can ask the court to order the Department to carry out its duties, or to order a specific visitation schedule. (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1238.) As we explained in *Christopher H.*, “If the [Department] is abusing its responsibility in managing the details of visitation, [mother] may bring that matter to the attention of the juvenile court by way of a section 388 petition to modify the visitation order.” (*Christopher H.*, *supra*, 50 Cal.App.4th at p. 1010.)

In sum, we must conclude that the trial court properly ordered visitation between Nancy and the children, and properly delegated the details of time, place, and manner to the Department.

Failure to Place Children with Great-Grandparents

Finally, Nancy contends the juvenile court abused its discretion in not ordering placement of the children with great-grandparents and reversal is required because the court failed to state on the record its reasons for not placing the children with great-grandparents.

Section 361.3 assures interested relatives that, when a child is taken from his or her parents and placed outside the home pending the determination whether reunification is possible, the application of a relative requesting placement will be considered and investigated before a stranger’s application. (§ 361.3, subds. (a) & (c)(1); *In re Sarah S.* (1996) 43 Cal.App.4th 274, 285 (*Sarah S.*)). Section 361.3 does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line. (*Sarah S.*, *supra*, 43 Cal.App.4th at p. 286.)

To implement the relative placement preference, section 361.3 also sets forth procedures for the social worker and the court to follow. The social worker initially shall contact the relatives given preferential consideration, i.e., an adult who is a grandparent, aunt, uncle or sibling, to determine if they desire the child to be placed with them. (§361.3, subds. (a), (c)(1), & (c)(2).) The social worker thereafter shall assess other

relatives desiring placement, including great-grandparents, according to a nonexclusive list of factors in determining whether placement with a requesting relative is appropriate. (§ 361.3, subds. (a) & (c)(2).)⁴ The social worker shall document these efforts in the social study prepared for the court's disposition (§ 358.1). (§ 361.3, subd. (a).)

⁴ Factors for the social worker's consideration include but are not limited to:

“(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs.

“(2) The wishes of the parent, the relative, and child, if appropriate.

“(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

“(4) Placement of siblings and half-siblings in the same home, if that placement is found to be in the best interest of each of the children as provided in Section 16002.

“(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect.

“(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful.

“(7) The ability of the relative to do the following:

“(A) Provide a safe, secure, and stable environment for the child.

“(B) Exercise proper and effective care and control of the child.

“(C) Provide a home and the necessities of life for the child.

“(D) Protect the child from his or her parents.

“(E) Facilitate court-ordered reunification efforts with the parents.

“(F) Facilitate visitation with the child's other relatives.

“(G) Facilitate implementation of all elements of the case plan.

“(H) Provide legal permanence for the child if reunification fails.

“However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

“(I) Arrange for appropriate and safe child care, as necessary.

Here, counsel requested assessment of great-grandparents in October 2008. The DIF performed the assessment by completing a socio-economic study of great-grandparents, which concluded that from an economic point of view, great-grandparents were not considered “fit to have custody” of the children because their expenses were tight, and while great-grandfather was “more fit” to provide emotional stability, great-grandmother should first undergo psychological treatment due to her previous situation with other partners. The Department noted in the report prepared for the dispositional hearing that the great-grandparents’ socio-economic study showed they were emotionally well, but did not seem to have enough economic stability to provide the children with a better future, and Nancy’s socio-economic study showed she was financially dependent on great-grandparents, who did not have steady jobs.

Nancy asserts there are no facts in the great-grandparents’ socio-economic study that warranted denial of placement with them. Nancy argues the positive information in the study, such as great-grandparents’ good relationship with each other, the cleanliness of the house, that the house had essential furniture and a bathroom, that the great-grandparents reported having no debts and not spending all of the money they earned each month, and that great-grandparents were responsible and emotionally mature, required placement of the children with them.

One of the factors the court may consider in determining whether placement with a relative is appropriate, however, is the relative’s ability to provide a home and the necessities of life for the child. (§ 361.3, subd. (a)(7)(C).) As we read the socio-economic study, the DIF worker concluded that great-grandparents could not provide the children with the necessities of life. That great-grandparents reported being debt-free and

“(8) The safety of the relative’s home. For a relative to be considered appropriate to receive placement of a child under this section, the relative’s home shall first be approved pursuant to the process and standards described in subdivision (d) of Section 309.” (§361.3, subd. (a).)

able to pay their bills does not necessarily negate the DIF worker's conclusion that great-grandparents did not have the means to support the children. Notably, Nancy did not raise the sufficiency of DIF's assessment of great-grandparents' home below. Accordingly, to the extent she now contends the assessment was inaccurate or unsupported by the evidence, she has forfeited this issue on appeal (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754 ["The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court so that they may be corrected."].)

Moreover, other factors supported the decision not to place the children with great-grandparents. The children apparently had no relationship with great-grandparents, as the children had not been to Mexico. (§ 361.3, subd. (a)(6).) Nancy was living in the home with great-grandparents. (§ 361.3, subd. (a)(5).) Finally, it was in daughter's best interest not to be placed with relatives she did not know and sent to a country where she had never lived, as her therapist was concerned she might regress and her level of functioning decline if she were removed from her current environment and placed with someone who was essentially a stranger. (§ 361.3, subd. (a)(1) ["best interest of the child" is one factor to consider].)

Although the juvenile court did not specifically state its reasons for not placing the children with great-grandparents, any error in failing to specify these reasons was harmless. In the analogous context of cases involving a court's obligation to make findings regarding a child's change of custody, courts have held that the failure to do so will be deemed harmless where "'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.'" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.)

While Nancy argues the DIF's recommendation was based on unreasonable criteria and cites facilitation of reunification as a factor supporting placement with great-grandparents, "the 'best interests of the child' is the lynchpin of the analysis." (*In re*

Robert L. (1993) 21 Cal.App.4th 1057, 1068.) “It is that principle-the minors’ best interests-which underlies the decision the court must make under section 361.3.” (*In re Luke L.* (1996) 44 Cal.App.4th 670, 680.) According to the evidence presented to the dependency court, daughter apparently had no relationship with great-grandparents and had never lived in Mexico, and changing her placement so she could live with strangers in a strange land would be potentially emotionally damaging to her. On this record, considering the factors enumerated in section 361.3, subdivision (a), and with the best interests of the children underlying its decision, it is not reasonably probable that the juvenile court would have ordered a change in the children’s placement. Nancy has failed to demonstrate an abuse of discretion. (*In re Robert L., supra*, 21 Cal.App.4th at p. 1067.)

DISPOSITION

The juvenile court’s jurisdictional and dispositional orders are affirmed.

Gomes, J.

WE CONCUR:

Ardaiz, P.J.

Levy, J.